

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Appeal Nos. 1027 and 1028 of 2001

Date of decision: 13th November 2003

For the approval of:

Hon'ble Chief Justice S.H. Kapadia. (S.H.Kapadia)

Hon'ble Mr. Justice Irshad Hussain. (Irshad Hussain)

- Whether the order/judgement should be sent to the reporters for reporting? (yes)
- Whether the reporters be allowed to see the Judgment? (yes)

(Gurpreet)
P.A.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Appeal Nos. 1027 and 1028 of 2001

Brijesh Tyagi
R/o Mohalia Chukhuwala
P.S. Kotwali
Dehradun

.....

Appellant

Versus

State

.....

Respondent

Sri, Arvind Vashisth and Sri J.D.Jain, learned counsels for the appellant.
Sri D.K.Sharma, learned A.G.A. for the State.

Coram: **Hon. S.H.Kapadia, C.J.**
 Hon. Irshad Hussain, J.

Date: November 13, 2003.

ORAL JUDGMENT : (Per: Hon'ble Irshad Hussain, J.)

Appellant Brijesh Tyagi has been convicted under Sections 302 IPC and 25(a) of the Arms and has been sentenced to undergo imprisonment for like and rigorous imprisonment for two years respectively, per judgment and order dated 25.3.1982 by the then Sessions Judge, Dehradun in sessions trial nos. 78 and 114 of 1980.

2. The facts of the case are as follows:

On 13.3.1980 murder of one Abid Ali brother of PW1, Riyasat Ali was committed. Appellant-Brijesh Tyagi was then in the company of the said deceased. He lodged FIR of the incident at P.S. Kotwali, Dehradun. After investigation charge-sheet was submitted and the case was committed to sessions. Appellant was, however, not willing to testify and support the prosecution case. PW1, Riyasat Ali's persuasions were not taken seriously by Brijesh Tyagi. The two deceased in the present case, namely, Jaswant alias Chunni and Vikram, both of whom had criminal history, had acquaintance with Abid Ali and his brother Riyasat Ali, who made contact with them and they decided to meet for the

purpose of discussing the issue of evidence to be led against the assailants of Abid Ali. Both the deceased together with Riyasat Ali and appellant assembled at the house of Sunil Kumar in the town of Dehradun at about 3:00 PM on 20.4.1980. This venue was chosen due to presence of the guests in the house of Riyasat Ali.

3. In the house of Sunil Kumar, the two deceased Jaswant alias Chunni and Vikram sat on a cot whereas Riyasat Ali sat down close-by on a table and appellant (Brijesh Tyagi) occupied a chair lying closely. Sunil Kumar alias Pappu shared the table with Riyasat Ali. The deceased Vikram asked the appellant as why he was not willing to won the FIR and support the prosecution case against the assailants of Abid Ali. Appellant-Brijesh Tyagi told him that he will take his won decision in the matter. His reply was not appreciated and this led to exchange of hot words. Both the deceased then gave threat to the appellant that if he will not give evidence in that case they will taught him a lesson. Riyasat Alli however pacified them. Despite this, appellant showed his anger by retorting that time alone will tell as to who would be at the received end. At that time both the deceased lay on the same cot in sleeping posture with their heads towards north. Appellant then took out a revolver and fired three or fours shots hitting the two deceased on their heads. Both of them received the shots and died instantaneously on the cot itself. Appellant then fled from there. Riyasat Ali and Sunil Kumar, out of fear, made no attempt to capture the appellant.

4. Sunil Kumar thereafter prepared a written report (Ex.ka.5) and left for the police station heaving behind Riyasat Ali there at the scent of the occurrence. He lodged the report at P.S. Kotwali at 4:15 PM and check FIR (Ex.ka. 6) was accordingly prepared. A case under Section 302 IPC was registered and investigation was entrusted to S.I. Sri A.K. Yadav. He left for the scent of the occurrence with inspector incharge of the police station and other police personnel and held inquests on the dead bodies of the two deceased and thereafter these were packed and sealed and dispatched for postmortem.

5. According to the prosecution case police parties were deputed to search and arrest the appellant. One of the police party headed by the Inspector Vikram Singh was successful in arresting the appellant the same day i.e., 20.4.1980 at 8:15 PM near Loco-Shed at Railway Road near Tiraha of Rest Camp. On his search foreign made revolver, 455 bore (Ex.1) was recovered.

From the chamber of the revolver 4 fired cartridges (Ex.2 to 5) and 2 live bullets (Exs. 6 and 7) were seized. Appellant was then taken to the police station where report of the arrest and recovery (Ex.ka. 16) was lodged by said Inspector Vikram Singh at 9:50 PM. The sealed articles were deposited at the Malkhana and the case under section 25 of the Arms Act was registered. Postmortem on the dead bodies of the two deceased were performed on 21.4.1980. Two bullets (Ex.25 and 26) from inside the body of Jaswant alias Chunni And one deformed bullet (Ex.27) from the body of Vikram were recovered. The bullets alongwith revolver (Ex.1) and cartridges (Ex.2 to 5) were sent to Ballistic Expert,. As per his report (Ex.ka.40) bullets (Ex.25 and 26) were fired from the revolver (Ex.1). Bullet (Ex.27) being deformed was found unfit for verification.

6. Appellant did not admit the accusations of the prosecution. He, however, admitted that report (Ex.ka.3) of the occurrence in which Abid Ali was murdered was lodged by him. He gave out that he was taken from his house at about 3:30 PM or 4:00 PM on 20.4.1980 and falsely implicated in the case by Inspector Vikram Singh who wanted him to support the prosecution case against the assailants of Abid Ali. He also claimed that the said report was got lodged at the instance of this police Inspector and since he was not willing to support the same, the police and Riyasat Ali started entertaining enmity against him, leading to his implication in the case. Application has examined his neighbour DW1, Smt. Gulab Rani Agarwal wife of Sri R.P. Agarwal, retired Chief Engineer and secretary, U.P. Government in support of his plea that he was picked from his house.

7. In order to prove its case, the prosecution examined five witnesses and filed affidavits of five police constables in regard to formal evidence. Of these, PW1 Riyasat Ali is the eye-witness of the occurrence and he narrated the prosecution case as stated in the written report (Ex.ka.5) and reproduced above.. He denied to the suggestion that he had not seen the incident and the appellant has been falsely implicated on account of the refusal to give evidence against the assailants of his brother Abid Ali. PW2, Vikram Singh proved the factum of arrest of the appellant and recovery of revolver etc. as stated above. He also proved the memo of arrest and recovery as well as the material exhibits referred above. He refuted the suggestion that the appellant has been falsely implicated in the case at his instance. PW3, A.K. Yadav testified in relation to formalities of the investigation. He also prepared site plan (Ex.ka.18) of the

scene of the occurrence and attached blood stained and plain earth (Ex. 8 and 9) vide memo (Ex.ka 19) from there. He was also the member of the police party which arrested the accused. He corroborated the prosecution case regarding the arrest and recovery as stayed above. On completion of the investigation charge-sheet (Ex.21) under Section 302 IPC was submitted by him against the appellant on 18.6.190. PW4, Sri S.S.Kandyal was also posted as S.I. at P.S.Kotwali and investigation of the case under section 25 of the Arms Act against the appellant was entrusted to him. He filed charge-sheet (Ex.ka.24) under Section 25 of the Arms Act against the appellant. PW5, Sri Ram Asrey Pande, Scientist in the Forensic Laboratory, Lucknow proved his report (Ex.ka.40) and affirmed his conclusion that the bullets (Ex.25 & 26) and bullets of cartridges (Ex. 2 to 5) were fired from the same weapon, revolver (Ex.1).

8. Defence has, like other documents of prosecution (except written report), dispensed with the formal proof of the postmortem reports of the two deceased. As per postmortem report (Ex.ka. 34) of Vikram Singh following ante-mortem injuries were detected:-

- (i) Fire arm wound of entry (circular) 1 cm. in diameter on the back of left side head, 10 cms above and behind left ear. Totooing around the wound present.
- (ii) Fire arm wound of entry (circular) 1 cm. in diameter of left mastoid region 4 cms. Behind the left ear.
- (iii) Fire arm wound of exit 205 cms. X 2 cms on the left side of back of neck, 13.5 cms. Behind left ear with inverted and irregular margins. It correspond to wound of entry no. 2.

On internal examination an irregular hole on left parietal bone 2 cms underneath injury no.1 was detected. One irregular flattened bullet was recovered from bone and base of skull. The death was caused due to injury to brain as a result of ante-mortem injuries.

As per the postmortem report (Ex.ka. 35), the following ante-mortem injuries were detected on the body of deceased Jaswant alias Chunni:-

- (i) Fire arm wound of entry (circular) 1cm. in diameter on the right temporal region, 4 cms infront of right ear. Tatooing around the wound present.

- (ii) Fire arm wound of entry (circular) 1 cm. in diameter on the right temporal region, 2.5 cms. Infront of injury no. 1. Tatooing around the wound present.

On internal examination, bones of right side of skull including temporal bone were found broken into small pieces and some pieces were lying embedded in brain matter. Two large irregular bullets were recovered from the brain matter near base of the skull. Death of the deceased was caused due to injury to brain as a skull. Death of the deceased was caused due to injury to brain two live cartridges in the belt (ticket) pocket of the deceased.

10. Learned Session Judge on the basis of his appreciation of the evidence in the case held the appellant guilty under Section 302 IPC and Section 25(a) of the Arms Act and sentenced him as aforesaid.

11. We have heard both the learned counsel for the parties and gone through the entire evidence on record with the assistance of both of them. We have also gone through the judgment of the trial court.

12. Learned Counsel for the appellant submitted that the learned Sessions Judge fell in error in placing implicit reliance on the evidence of single eye-witness Riyasat Ali because he was entertaining enmity against the appellant on the issue of supporting the prosecution case against the assailants of Abid Ali and also because there was no corroboration to his evidence about the incident. It was further submitted that the expert's evidence regarding use of revolver (Ex.1) was not based on correct reasonings and therefore the same could not have been taken to support the allegations against the appellant. Evidence of the police witnesses regarding arrest and recovery of weapon of crime was sought to be discarded for want of absence of corroboration by independent evidence. The sentence awarded were also challenged on the plea that there was no compliance of the provision of the Section 235(2) of Code of Criminal Procedure. On the other hand, the learned AGA made submissions supporting the conclusion drawn by the learned Sessions Judge and argued that the unshaken testimony of PW1, Riyasat Ali was sufficient to bring home guilt to the appellant. The evidence of police witnesses was also defended in the backdrop of the peculiar circumstances and the motive of the crime having been established by the evidence and probabilities of the case.

13. Having carefully considered the evidence and the judgment of the learned Session Judge in the light of the argument at the bar we may point out

at the outset that the evidence of the prosecution in the case is credible and reliable and the story as put forth by the prosecution is not only highly probable but also unshaken and consistent. We proceed to record our reasonings for the decision.

14. At the outset, it need to be stated that homicidal deaths of both the deceased have not been disputed by the defence. Same was the case in regard to the time and place of the occurrence as alleged by the prosecution, that is, at about 3:30 PM on 20.4.1980 in the house of Sunil Kumar at 21 Dhamawala, P.S. Kotwali, Dehradun. It is well settled that conviction can be based on testimony of a single eye-witness, provided his credibility is not shaken. As stated above PW1, Riyasat Ali narrated the entire prosecution story in his evidence and nothing of significance could be extracted from his cross-examination as may in any way shake his basic version regarding the actual incident. He is the real brother of Abid Akli deceased. Report (Ex.ka.3) of the murder of Abid Ali was lodged by the appellant. Contrary to this PW1, testified that the report of the murder of his brother was lodged by him. General diary entry (Ex.Ka.7) relating to the lodgment of the appellant at the police station after his arrest in the night of 20.4.1980 reveal that appellant had plaster on his left hand. PW1, gave out that at the time of the commission of the crime on 20.4.1980 the hand of the appellant was not found plastered. These infirmities were pointed out by the learned counsel for the appellant to discredit the credibility of the witness, In our view these are minor infirmities which could not at all be taken to disbelieve his evidence in regard to the factual occurrence of that day. It is undisputed that appellant was the star witness of the incident of murder of Abid Ali and out confusion if this witness claimed that the report of that incident was lodged by him, it makes little difference so far as the reliability of his evidence is concerned.

15. As regards his claim that hand of appellant was not plastered at the time of the incident, we may safely state that the witness said so on the spur of moment on account of psychological defence mechanism activated on account of fear of looking foolish or being disbelieved as to how an assailant having his hand plastered could wield a revolver, weapon of assault, although the plaster was in the left hand of the appellant. These discrepancies, therefore do not go to the root of the matter and shake the basis version of the witness.

16. This witness has disclosed that his statement by the investigating officer was recorded next day of the occurrence, that is, on 21.4.1980. Pointing out to

it, learned counsel argued that his presence at the time of the incident become doubtful and in the face of the facts of the case the learned Session Judge should not have placed reliance on his evidence. We find no cogent reasons to attach undue importance to this aspect because name of the witness figure in the FIR (Ex.ka6) which was lodged with utmost promptitude at 4:15 PM at the police station. The occurrence as stated above took place at about 3:30 PM and the prompt lodging of the FIR rule out any possibility of deliberation to falsely implicate appellant in the crime. Moreover, considering the fact that the investigating officer had to hold inquests on two dead bodies besides completing other formalities and also having urgency to search and arrest the culprit there was nothing unusual if the investigating officer deferred recording of the statement of this witness to next day. Therefore, the learned counsel for the appellant cannot be permitted to make capital out of the said fact so as to canvass for rejection of the evidence of the witness.

17. Further, the assembly to discuss the issue on that day related to the murder of Abid Ali, the real brother of the witness and since he had sought the assistance of the two deceased to impress upon the appellant the need to testify and support the prosecution case against the assailants of Abid Ali, the presence of this witness was most natural. Therefore, the presence of the witness at the scene of the incident cannot be doubted unless and until there are weighty and strong cogent reasons to come to a definite conclusion regarding his absence from the assembly that day. Since nothing of substance could be brought about from the evidence of the witness or by any other evidence in the case, we are forced to agree with the inference drawn by the learned Sessions Judge that this witness was present there at the scene of the occurrence and had witnessed everything which happened that day. In other words, the ocular testimony of this witness repose full confidence and we also have no hesitation to come to the conclusion that Riyasat Ali is a truthful witness and his testimony alone is sufficient to record a finding that the appellant assaulted the two deceased by wielding a fire arm. A decision of the Apex Court in the matter of **Chittar Lal Vs. State of Rajasthan : 2003 Supreme Court Cases (Cri) 1377** was pressed into service by the learned AGA in support of his argument that law does not insist upon quantity of the evidence but on quality and that conviction can be based on sole evidence of a witness if it inspires confidence. The Hon'ble Judges of the Supreme Court laid stress on this principle in the reported decision which squarely apply to the facts of the

instant case and as stated above there can be no saying that the quality of the evidence of PW1 warrant implicit reliance on it to record finding of guilt of the appellant.

18- In regard to the arrest of the appellant and recovery from him of revolver (Ex.1) prosecution examined PW2, Inspector Vikram Singh and PW3, S.I. A.K. Yadav who, among others, were also the member of the police party. The evidence of both these witnesses is categorical and consistent that the appellant was arrested from near Tiraha of Rest Camp close to Railway Station. They also stated in one voice that revolver (Ex.1) with 4 fired cartridges (Ex.2 to 5) and 2 live bullets (Ex.6 and 7) in its chamber was recovered from him. They further proved the relevant memo of arrest and recovery and the fact that the report was also lodged the same night at 9:50 PM on 20.4.1980 and that the appellant and recovered arms etc. were also handed over at P.S. Kotwali when report (Ex.Ka.6) was lodged there by PW2. It has come in the evidence of PW2 that since the appellant suddenly appeared at the place of the arrest no public witness could be procured to witness arrest and recovery. The definite evidence of the witness shuts the argument of the learned counsel for the appellant that evidence of the police witnesses could not be relied upon in the absence of corroborative evidence of any public witness. Both these police witnesses were cross-examined at length but nothing incriminating to them and beneficial to the defence cause could be brought on record. Therefore, there are no cogent reasons to disbelieve the evidence of these witnesses only on the plea that they being police personnel were interested in the success of prosecution's case. We are of the view that the learned Sessions Judge rightly placed reliance on their evidence in regard to the arrest and recovery. Here it need to be mentioned that the Apex Court in the matter of **Nathu Singh Vs. State of Madhya Pradesh; AIR 1973 SC 2783** laid stress on the principle that the mere fact that the prosecution witnesses are police officers is not enough to discard their evidence, in the absence of evidence of their hostility to the accused. There being no cogent reasons to suggest that police officers were inimical towards the appellant, the evidence in this case has rightly been accepted by the learned Sessions Judge.

19. Appellant in support of his claim that he was picked up from his house by the police at about 3:30 PM or 4:00 PM on 20.4.1980 examined DW1, Smt. Gulab Rani Agarwal. Although she was residing in the neighbourhood of the appellant but her evidence was not found convincing by the learned trial court.

We also agree to it, in view of the fact that she gave out that the appellant was taken away by the police from the house on that day also testified that she made no queries at that time thinking that the appellant was then accompanying some of his relations. If the witness thought that some of the relations were with the appellant then how she could have claimed that she saw the police personnel picking up the appellant from the house that day. In this way her evidence is not cogent enough to repose confidence and in our view the defence had not been able to make any dent in the shell of reliability of the prosecution evidence referred above. In short, we also find the prosecution evidence reliable and it prove that appellant was arrested at about 8:15 PM on 20.4.1980 and revolver (Ex.1) alongwith fired cartridges and bullets (Ex.2 to 7) were recovered from him.

20. So far as the claim of the prosecution that revolver (Ex.1) was used by the appellant in the commission of the murders of the two deceased, it need to be mentioned that the ballistic expert Sri Ram Asrey Pande (PW5) proved the steps taken by him for said verification in a scientific way and also his conclusion that bullets (Ex.25 and 26) retrieved from the brain matter of deceased Jaswant alias Chunni were fired from revolver (Ex.1) and the bullet (Ex.27) retrieved from the base of skull of Vikram Singh deceased being deformed was not found suitable for dependable comparison and finally verification. He also proved his report (Ex.ka.40) formal proof of which was also dispensed with by the defence. He was not subjected to cross-examination by a defence in regard to the method of comparison employed, his reasonings and the final conclusion as given above. The only question asked in cross-examination related to the distance from which blackening will occur on the fire arm wound. Learned counsel for the appellant drew attention to the evidence of the expert and his report (Ex.ka.40) and submitted that identification marks on bullets (Ex.25 and 26) were not similar to the marks received on the test fired bullets (TB-1 to TB-3) in as much as in the test fired bullets there were six lands and six grooves whereas on the disputed bullet (Ex.25) three lands and three grooves and on disputed bullets (Ex.26) four lands and four grooves were found on microscopic examination. No doubt, there is no matching number of grooves and lands but there directions towards left and good number of similarities were sufficient to form an opinion as given by the expert. It is specifically mentioned in the report that bullets (Ex.25 and 26) were also slightly deformed from one side and this was reason that

equal number of matching grooves and lands could not be found on these bullets. Therefore, in the face of the peculiar aspects of the case and the reasonings given by the expert we are not impressed by the argument of the learned counsel that the expert's evidence need to be discarded altogether. In our view, the learned Sessions Judge made no error in accepting the expert's evidence as supporting the case of the prosecution that revolver (Ex.1) seized from the appellant was wielded in assaulting the victims of the case. It is fully proved from the evidence of the eye-witness that appellant had fired three or four shots from his pistol on the heads of the two deceased and therefore the evidence of the eye-witness of the case find support from the evidence of the expert.

21. When the revolver (Ex.1) was produced before PW3 for its identification the sealed packet was opened and it was found wrapped in a paper (Ex. Kha. 1) contrary to the claim that it was packed on a cloth at the time of recovery. This paper has sketch of dead body which is normally used as inquest document to mark the injuries of the victim. The learned counsel argued that the revolver having been found wrapped in such paper indicate that it was planted on the appellant after the sealed packet was prepared at the police station and therefore the evidence of the prosecution about the arrest and recovery requires rejection. We find no force in this argument also because the revolver was earlier sent to the expert for its test examination etc. and the expert (PW5) was not cross-examined regarding the manner of packing and sealing before it was returned from the laboratory to the police. Therefore, the possibility cannot be ruled out that revolver (Ex.1) was wrapped in that paper in the forensic lab.

22. There could be no gainsaying that the prompt FIR of the case as well as uncontroverted medical evidence fully corroborate the prosecution version and testimony of eye-witness Riyasat Ali (PW 1). It need to be stated that written report (Ex.Ka.1) has to be taken to be proved through the testimony of PW1, Riyasat Ali who fully supported its version and testified that its author and informant Sunil Kumar is believed to have been murdered. His claim has neither been challenged nor controverted by the defence.

23. The investigation of the case was also adversely commented upon by the learned counsel for the appellant by referring to the inquest report (Ex.Ka.32) of Jaswant alias Chunni deceased as well as the post mortem report (Ex.ka 35) of the said victim with reference to the recovery of two live cartridges (bullets)

found in the belt pocket of the trouser by the medical officer at the time of the post mortem. On the back of first leaf of the inquest report there is description of the apparel of the deceased. There is endorsement that the front ticket pocket of the trouser of the deceased has two live revolver bullets. The learned counsel pointed out that, that much of the endorsement clearly appear to have been inserted later on by a pen of ink no similar to the other description of the apparel and that the endorsement was inserted when it came to the notice that the two live bullets were found by the medical officer at the time of the post mortem of the dead body. The thrust of the argument was therefore that if such a thing can happen a certificate of fairness in the investigation of the case can hardly be given and that in turn this aspect of the matter assails the veracity of the prosecution version and the investigation of the case. Considering the totality of the circumstances of the case the argument can only be said to be having an academic touch and by no reasoning, even if it is accepted as stated, it will not have a telling effect on the proved veracity of the prosecution version and over-all fair investigation of the case.

24. In regard to the cause of the crime the relevant facts of the case itself present an answer to it. The two deceased with the criminal history were acquaintances of Abid Ali and they also wanted the reluctant appellant to testify and support the prosecution version against the assailants of Abid Ali. Since the appellant was yet to appear as a witness in the said case and finding that the two deceased in the present case would continue to unduly pressurize him and may even take extreme steps of eliminating him, the appellant made up his mind to remove them from the scene and committed their murder as alleged by the prosecution. Therefore, the motive aspect of the case also stands established from the admitted facts and the probabilities as emerged from the evidence in the case.

25. In view of the above reasons and discussion, it is evident that the prosecution has been able to prove beyond doubt that the appellant fatally assaulted the victims Jaswant alias Chinni and Vikram deceased at about 3:30 PM on 20.4.1980 by wielding a revolver (Ex.1), which was recovered from his possession the same day at 8:15 PM. The learned Sessions Judge had therefore rightly held the appellant guilty of the charges under Section 302 IPC and Section 25(a) of the Arms and Ammunition Act.

26. The appellant was not heard on the point of sentence awarded. The learned Sessions Judge was of the view that the opportunity is not necessary

when looking to the totality of the circumstances lesser punishment of imprisonment for life under Section 302 IPC and two years R.I. under Section 25(a) of the Arms Act is to be awarded in the case and which sentences were to run concurrently. Learned counsel for the appellant submitted that the approach was contrary to the mandatory requirement of Section 235(2) of the Code of Criminal Procedure, which imply that opportunity to be given on the point of sentence must be real and effective and that in the absence thereof the sentences awarded stands vitiated. Learned counsel pressed into service the decisions of the Apex Court in the case of **Santa Singh Vs. State of Punjab: 1976 (4) SCC 190 (Supreme Court)** and in the matter of **Allauddin Mia and others Vs. State of Bihar : 1989 Cr.L.J. 1466 (SC)** to bring home his point of view. In the cases before the Supreme Court the culprits were awarded capital punishment under Section 302 IPC and there was no effective compliance of the provision of Section 235(2) of the Code of Criminal Procedure. In the first case, the appeal was allowed on the question of sentence and the matter was sent back to the trial court for giving an opportunity to the accused to make a representation regarding sentence proposed. In the latter mentioned case considering the attending circumstances the appeal were partly allowed and the sentence of death was altered to imprisonment for life. The facts of the instant case are, however, at variance, in the sense, that the learned trial court having made up its mind, on the basis of the circumstances of the case, to award lesser punishment of imprisonment for life under Section 302 IPC and also to direct the sentences to run concurrently, did not consider it necessary to hear the appellant on the quantum of the sentence. Even otherwise no prejudice has been caused to the appellant due to the fact that the sentences were directed to concurrently and since he was awarded lesser punishment as provided under Section 302 IPC we need not resort to the option to remand the matter for giving an opportunity to the appellant to make submission and representation on the point of sentence proposed.

27- For the reasons stated above both the appeals merit dismissal. We dismiss both the appeals. The conviction and sentences as awarded against the appellant by the learned Sessions Judge, Dehradun per judgment and order dated 25-3-1982 are, therefore, upheld. The appellant is on bail. He shall be taken into custody and sent jail to serve out the sentences awarded against him.

28- Let the record of the case be sent back to the Sessions Judge, Dehradun for compliance, to be reported to the court within two months.

(Irshad Hussain, J.)

(S.H. Kapadia, C.J.)

(Rawat)